



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

## OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

JUL 22 2003

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(ENVIRONMENT, SAFETY & OCCUPATIONAL  
HEALTH)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(SAFETY)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(ENVIRONMENT, SAFETY & OCCUPATIONAL  
HEALTH)  
STAFF DIRECTOR, ENVIRONMENT & SAFETY,  
DEFENSE LOGISTICS AGENCY SUPPORT SERVICES

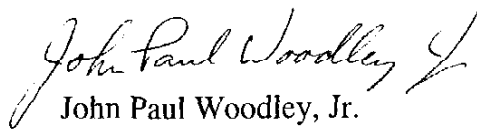
SUBJECT: DoD Policy on Compliance with the Requirements of States and Compacts  
Regarding Low Level Radioactive Waste (LLRW)

Current DoD LLRW policy and procedures are found in regulation DoD 4715.6-R, "Low-Level Radioactive Waste Disposal Program," dated January 17, 2001. This memorandum (with attachment) provides additional guidance on compliance with requirements of States and Compacts regarding LLRW.

In compliance with the Low-Level Radioactive Waste Policy Act, States have entered into Compacts to provide for the safe disposal of LLRW on a regional basis, including certain LLRW generated by the DoD Components. Our waste is subject to the same conditions, regulations, requirements, fees, taxes, and surcharges as are imposed on non-Federal LLRW generators by the Compact or State in which the disposal facility is located. In some cases, Compacts and States that have no disposal facility have developed requirements for LLRW exported for disposal outside the Compact or State where the LLRW was generated. In such situations, DoD has authority to reimburse the Compact or State for the value of services received, including the assurance of present and future disposal capacity for the LLRW generated by DoD. Thus, DoD Components may presume that Compact or State requirements, including payment of reasonable fees and service charges, related to the life-cycle management of LLRW are appropriately related to the provision of beneficial services for the disposal of DoD LLRW. Additional guidance is attached. Specific concerns on these management costs with the Compact or State should be discussed with the Army (DoD Executive Agent), as indicated in the attached guidance.



Compliance with these policy procedures will help ensure safe, compliant management and disposal of our LLRW and continue the valued working relationship with the Compacts and States. My point of contact about this policy is Mr. Ed Miller at (703) 604-1765.

A handwritten signature in cursive script that reads "John Paul Woodley, Jr." with a stylized flourish at the end.

John Paul Woodley, Jr.  
Assistant Deputy Under Secretary of Defense  
(Environment, Safety & Occupational Health)

Attachment:  
As stated

**DoD Policy on Compliance with the Requirements of  
States and Compacts Regarding Low Level Radioactive Waste (LLRW)  
(July 2003)**

Congress developed a national program for safe and effective disposal of LLRW through the Low-Level Radioactive Waste Policy Act, as amended (LLRWPA) (42 USC § 2021b et seq.). In furtherance of this law, and with the consent of Congress, States have entered into a number of Interstate Compacts (Compacts) to provide for the disposal of LLRW on a regional basis. As provided by the LLRWPA and the Compact system, States are required to provide for the disposal of LLRW, including certain LLRW generated by the DoD Component (42 USC § 2021c(a)(1)(B)). DoD Regulation 4715.6-R, "Low-Level Radioactive Waste Disposal Program," dated January 17, 2001, prescribes procedures for implementing the DoD LLRW disposal program.

Generally, when a DoD Component disposes of LLRW at a regional or State disposal facility, our waste is subject to the same conditions, regulations, requirements, fees, taxes, and surcharges imposed by the Compact or State in which the disposal facility is located, *in the same manner and to the same extent as any LLRW not generated by the Federal Government* (42 USC § 2021d(b)(1)(B)).

Even when a Compact or State does not host a disposal facility, DoD has authority, under general principles of federal fiscal law, to provide reimbursement for the value of the services that DoD receives from the State or Compact in assisting with the disposal of DoD's LLRW. One of these services is the assurance by the Compacts, both presently and in the future, of sufficient disposal capacity for LLRW generated by DoD, while considering that needed by other public and private LLRW generators. In order to assure this capacity, some States and Compacts have developed requirements that apply to LLRW generated within a Compact or State and exported for disposal at a facility located outside of the Compact or State where the LLRW was generated. These requirements may be necessary to allow the Compacts and States to monitor LLRW volume generated within the Compact or State and predict potential disposal requirements for all LLRW generated within the Compact or State to ensure the availability of adequate disposal capacity in the future. As a general matter, this function is of benefit to DoD, and a DoD Component can pay its "fair share" (i.e., reasonable service charges) to defray State and Compact expenses in performing this function.

In light of the necessary functions of the Compacts and States related to the assurance of adequate disposal capacity, DoD Components may presume that Compact requirements related to the life-cycle management of LLRW (the physical processing of LLRW, such as the collection, storage, packaging, consolidation, and treatment), including payment of reasonable fees and service charges, are appropriately related to the provision of necessary services to DoD facilities in connection with the disposal of LLRW. Where they appear reasonable, such requirements may be presumed necessary to allow the

Compacts or States to monitor DoD LLRW volume and predict potential disposal requirements for wastes generated within the Compact or State to ensure the availability of adequate disposal capacity in the future.

The Department of the Army has been designated the DoD Executive Agent for LLRW disposal issues (per DoD 4715.6-R) and maintains liaison with the LLRW Compacts and State agencies with responsibilities for LLRW. The Executive Agent executes this responsibility through the Operations Support Command (OSC). When, after obtaining a legal opinion from the appropriate Component legal adviser, a DoD Component believes compliance with a Compact or State requirement related to life-cycle management of LLRW is not reasonably related to services provided by the Compact and violates federal fiscal law, it will contact the OSC's Safety/Rad Waste Office to assist the DoD Component in working with the Compact or State to resolve the issue through the DoD LLRW Disposition Advisory Committee. If the issue cannot be resolved between the DoD Component and the Compact or State at that level, the issue will be elevated through the DoD Component's command structure for resolution. If, after elevation, the DoD Component determines the requirement cannot be complied with, it shall coordinate that determination with the Office Assistant Deputy Under Secretary of Defense (Environment, Safety & Occupational Health) prior to taking final action. For purposes of this policy, "final action" includes any action by which the DoD Component concludes that it cannot comply with the State or Compact requirement. Such action includes, but is not limited to, transmission of correspondence to the Compact or State conveying a final determination declining to comply with a requirement, submission of issues to administrative bodies for resolution, or referral of cases to the Department of Justice in anticipation of litigation.

Except to the extent a DoD Component must act immediately to preserve its legal position relative to a disputed requirement, the procedures in the preceding paragraph apply to all disputed Compact or State LLRW requirements. Disputes to which these procedures apply include, but are not limited to, issues involving:

- Regional access authorizations;
- Import fees and authorizations;
- Export fees and authorizations;
- Host State disposal, site use, and access fees and authorizations;
- Generator reporting requirements; and
- Compact and Host State surcharges

Compliance with these policy procedures will help to ensure safe and compliant management and disposal of our LLRW and continue the valued working relationship with the Compacts and States.